European Tax Report
Confédération Fiscale Européenne (CFE)

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CFE EVENTS

CFE European Professional Affairs Conference on 29 November 2011: New regulatory trends for tax advisers - necessary or not ?

The 4th CFE Professional Affairs Conference will take place in Brussels on 29 November 2011. It will deal with regulation of the tax profession at national level and recent developments in EU legislation and ECJ case-law that may impact on regulation. Speakers from national tax administration, the European Commission and the tax profession (both from regulated an unregulated member states) will discuss benefits and disadvantages as well as Internal Market challenges of regulation to find out how the future regulatory environment for tax advisers will and should look like. The half-day event will take place in English.

READ MORE ***(click to open):***

Programme and registration form: **EN**

CFE ECJ Seminar cancelled

The CFE regrets that it had to cancel its ECJ Seminar planned on 20 October 2011 in Luxembourg.

NEWS - DIRECT TAX

Commission unveils FTT proposal

On 28 September 2011, the European Commission has presented a proposal for an EU financial transaction tax (FTT). The tax would be levied on all transactions of financial instruments between financial institutions (these account for 85% of all financial transactions) when at least one party to the transaction is located in the EU. The exchange of shares and bonds would be taxed at a rate of 0.1% and derivative contracts at a rate of 0.01%. The Commission estimates that this could raise €57 billion per year. The tax should come into effect from 1 January 2014.

As reasons for introducing such tax, the Commission has stated that the financial sector should make “a fair contribution at a time of fiscal consolidation in the Member States”. The proposed tax would be fair because citizens have borne the cost of bank bailouts in the financial crisis and the financial sector has been under taxed because of the exemption of its services from VAT. Risky trading activities shall be discouraged. Moreover, the proposal seeks to consolidate the 10 existing forms of an FTT in the EU by introducing a minimum tax rate. The Commission has been in a hurry to issue the proposal in time before the G20 meeting in Cannes in November 2011.

According to the Commission proposal for a 2014-2020 financial framework (see **CFE European Tax Report 6/2011**, p.7), the revenue from the FTT would become a significant own resource of the EU, with the aim of lowering the direct contributions of Member States.

READ MORE ***(click to open):***

FTT Directive proposal COM/2011/594: **EN FR DE**

Press release: **EN FR DE ES NL IT PT FI EL CS LV MT PL SL SK BG RO**

FAQs: **EN FR DE BG ES CS EL IT LV MT NL PL PT RO SL SK FI**

(more links follow below)

READ MORE ***(click to open):***

Impact assessment (numerous documents) SEC/2011/1102 : **EN**

Impact assessment summary: **EN**

Citizens summary: **EN**

OECD appoints new Head of Transfer Pricing Unit

The OECD's Centre for Tax Policy and Administration has announced that Joseph Andrus has been appointed Head of the Transfer Pricing Unit within the CTPA's Tax Treaty, Transfer Pricing and Financial Transactions Division.

READ MORE ***(click to open):***

OECD news release: **EN** **FR**

Switzerland reported to negotiate further bilateral tax deals with EU countries

According to press reports, following tax agreements of Switzerland with Germany (on 10 August 2011) and the UK (on 24 August), the country is currently negotiating further bilateral agreements with other EU member states, including Greece. According to the two agreements signed, German and UK residents with Swiss savings would have to pay a onetime lump sum plus an annual tax on capital gains and dividend income but their names will not be disclosed. These new deals are wider in scope than the existing savings income agreement with the EU. The Swiss government and banks have expressed their satisfaction with not having to hand over details of suspicious clients to other countries. The German opposition who holds the majority in the Bundesrat, the legislative chamber representing the 16 Länder, declared they would block ratification of the agreement.

Commission requests Germany to amend tax rules on hidden reserves

On 29 September 2011, the European Commission formally requested Germany to amend its tax legislation on hidden reserves and end discrimination of certain cross border operations.

A hidden reserve is a resource that is not listed on a balance sheet, such as land or building shown at a value less than its market value. German rules allow taxable persons to transfer, tax-free, hidden reserves from sold assets to other newly purchased assets. This transfer of hidden reserves can take place in two ways. First, the taxable persons can deduct the capital gains from the new assets during the business year in which the sale took place. Second, the taxpayer can create a reserve to reduce his profit and transfer this to assets he procures during the next four or six business years. However, in German law, a transfer of hidden reserves in case of reinvestments is only possible if the newly purchased assets belong to a permanent establishment in Germany. Otherwise, they would be taxed immediately.

In practice, this means that a taxpayer wishing to sell certain of his fixed assets to establish himself in another EU or EEA Member State or to expand his business activities there would be at a disadvantage. The Commission finds that this unequal treatment discourages taxpayers from undertaking cross-border investments and is contrary to EU rules, notably the freedom of establishment in the TFEU and the EEA Agreement. The Commission does not see any possible justification for this. The Commission's request is the second step of EU infringement proceedings. If Germany does not notify the Commission within two months of measures taken to put an end to the infringement of EU law, the Commission may refer Germany to the EU Court of Justice.

READ MORE ***(click to open):***

Press release: **EN** **FR** **DE**

Commission requests Hungary to abolish tax on telecom operators

On 29 September 2011, the European Commission has requested Hungary to abolish specific turnover tax on telecoms operators which were introduced in October 2010. The Commission considers this tax is illegal under EU telecoms rules because revenue from the taxes is used for the Government's central budget and not for meeting the specific costs of regulating the telecoms sector.

NEWS - DIRECT TAX

The Commission's request takes the form of a ‚reasoned opinion' which is the second step in EU infringement proceedings. In March 2011, the Commission referred Spain and France to the ECJ for levying charges on telecom operators which it found to breach EU telecoms rules (see press release **IP/11/309**).

READ MORE ***(click to open):***

Press release: **EN** **FR** **DE** **HU**

Parent-Subsidiary-Directive: EP ECON Committee asks for minimum taxation in source state

On 22 September 2011, the ECON Committee in the European Parliament adopted a report of German Green MEP Sven Giegold on the recast of the Parent-Subsidiary-Directive, proposing a substantial change in so far as the state of the parent company or PE that receives distributed profits shall refrain from taxing such profits only if they have been taxed in the country of the subsidiary at a corporate tax rate not lower than 70% of the average corporate tax rate in the EU, or tax these profits at a corporate tax rate of not lower than 70% of the EU average corporate tax rate, allowing a proportional deduction of the tax paid in the source country. This is designed to prevent profit shifting to low-tax jurisdictions.

In its proposal of 4 January 2011, the European Commission did not make any substantial changes to the existing Parent-Subsidiary-Directive; the proposal is a mere recast. The EP plenary is scheduled to vote on the Giegold report in the week of 24 October 2011. The EP cannot veto the recast as proposed by the Commission so the report is to be seen as a political declaration, not as a legally binding amendment.

READ MORE ***(click to open):***

Draft report of 4 May 2011: **EN**
and amendments **EN**

Adopted text soon available on request to the :
CFE Brussels Office

Commission proposal: **COM(2010)0784** (*all languages*)

CFE issues Opinion Statement on Haribo/Österreichische Salinen

On 12 September 2011, CFE has issued an Opinion Statement on the joined European Court of Justice cases C-436 and 437/08, Haribo and Österreichische Salinen. The statement which was prepared by the ECJ Task Force of the CFE addresses double taxation relief for domestic and cross-border inbound dividends.

READ MORE ***(click to open):***

CFE Opinion Statement on Haribo/
Österreichische Salinen: **EN**

NEWS - INDIRECT TAX

Commission requests the Netherlands to modify rules on VAT treatment of participation in supervisory boards

On 29 September 2011, the European Commission formally requested the Netherlands to modify its rules on the treatment of members of supervisory boards for VAT purposes to make the rules comply with EU legislation. Under Dutch rules, individuals do not have to register for VAT, pay VAT on the compensation they receive or file VAT returns if they hold no more than four positions as a member of supervisory boards. The Commission considers that the activity of serving as a member of even one supervisory board must be considered as an economic activity subject to VAT and the VAT Directive does not allow for such exemption. In the absence of a satisfactory response within two months, the Commission may refer the Netherlands to the EU Court of Justice.

READ MORE ***(click to open):***

Press release: **EN** **FR** **DE** **NL**

Commission refers France to ECJ over VAT on ships

On 29 September 2011, the European Commission decided to bring an action before the Court of Justice concerning the VAT exemption applied by France to

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certain transactions involving vessels. The VAT Directive provides for exemptions from VAT, under certain conditions, on supplies of goods for fuelling and provisioning ships used for navigation on the high seas and on the supply, modification, repair, maintenance, chartering and hiring of such vessels. French legislation and administrative practice, however, go beyond what is laid down in the Directive, applying the VAT exemption to vessels carrying passengers for reward or used for the purpose of commercial activities, without requiring them to be used for navigation on the high seas.

READ MORE ***(click to open):***

Press release: **EN** **FR** **DE**

Commission publishes summary of study on VAT in the public sector

The summary relates to the Commission study presented in April 2011, see **CFE European Tax Report 4/2011**, p.5.

READ MORE ***(click to open):***

Summary (30-34 pages): **EN** **FR** **DE**

Full study (196 pages): **EN**

European Commission publishes e-learning course on electronic VAT refund procedure

The Commission has made available an e-learning course on the electronic VAT refund procedure designed for both economic operators and tax officials. Since January 2010, the procedure for reimbursement of VAT incurred by EU taxable persons in Member States where they are not established has been replaced by a fully electronic procedure, thereby ensuring a quicker refund to claimants.

READ MORE ***(click to open):***

DG TaxUD website: **EN** *(FR and DE available)*

EP ECON Committee votes on report on the future of VAT

The Economic and Monetary Affairs Committee of the European Parliament voted on 22 September 2011 in favour of an initiative report of the Maltese EPP delegate David Casa. The report expresses its support for the European Commission´s green paper presented on 1 December 2010 (see **CFE European Tax Report 9/2010**, p.4). The main points raised are the fight against fiscal fraud, the reduction of exemptions and reduced rates and harmonisation of goods and services to which those are applied, the reduction of administrative burden, improvement of VAT collection through e-government solutions and the use of regulations rather than directives for VAT.

The ECON agrees to the Commission´s approach to move towards a destination principle in VAT, abandoning the initial idea of an origin principle. VAT One-stop-shops should be introduced by 2015.

Regarding rates and exemptions, VAT treatment of transport should be independent of the mode of transport used. The tax rates for cultural goods should not depend on whether these are provided in digital form or on a physical means of support. All intra-EU cross-border travel should be subject to a harmonised rate and harmonised rules on deductibility.

Although favouring a broad base VAT and fewer reduced rates, the ECON seeks to establish a “green VAT strategy” for energy-efficient and environmentally-friendly products and wide VAT-exemptions of activities of non-profit making entities. The member states should agree until the end of 2013 on a common list of goods and services benefiting from exemptions or reduced rates that would be binding and exhaustive. The range of the standard VAT rate (currently between 15 and 25%) should be narrowed.

To facilitate compliance, the frequency of periodic VAT returns should be reduced, “nil”-intra-EU sales listings should be abolished, the proof for VAT export exemption simplified, electronic submission of VAT returns promoted. The Committee proposes to introduce a single VAT reimbursement procedure and VAT ID number, an EU-wide electronic VAT storage system and to abolish penalties for errors or format mistakes that have not caused a loss of revenue. Not only a European standard invoice should be presented but also a maximum set of VAT obligations that member states may impose on businesses. According to the ECON, the Commission should also consider an EU-wide VAT exemption threshold for small businesses.

Lastly, the report contemplates different ways to fight VAT fraud.

To achieve equal application of VAT rules, there should be a European interpretation body that can

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give binding answers to member states.

The ECON expects the Commission to present a legislative proposal until the end of 2012. Ideally, VAT should be governed by Regulations rather than by Directives so that no implementation delays or misconceptions would occur. If this should not prove possible, a "Common EU VAT Rulebook" should be the alternative.

Adoption in the EP plenary is scheduled for 24 October 2011. The report is not legally binding. See also the related **CFE Opinion Statement**.

READ MORE *(click to open):*

EN *(see language bar for other language versions)*

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Global Forum releases further tax transparency peer reviews

On 12 September, 12 new peer reviews on the EU countries Austria, Luxembourg and the UK plus a number of smaller, mostly Caribbean states were published. They focus on the legal frameworks for transparency and exchange of tax information (so-called Phase 1 Reviews). The review of the United Kingdom further considers the exchange of information in practice (Phase 2 Review).

The reports describe each jurisdiction's rules for ensuring that information is available to the tax authorities, how it can be accessed by authorities and the mechanisms in place to exchange information with foreign tax authorities. They also identify deficiencies and make recommendations on how to improve cooperation in international tax matters. In all 12 new reviews, the most common deficiencies relate to: the lack of available ownership information as regards trusts and bearer shares; incomplete accounting information for some forms of trusts and partnerships, including foreign or international entities; and some limitations in the international agreements allowing for exchange of information.

Two supplementary reports for Belgium and the Cayman Islands show that these countries are amending their domestic legislation to address recommendations made by the Global Forum in previous reviews. The OECD finds that Belgium's compliance with the international standards has improved significantly through introduction of new legislation lifting bank secrecy related to international tax matters.

The Global Forum also reviews countries that are not its members and that do not provide information of their own account. The OECD is optimistic regarding the move of jurisdictions towards more information exchange and cooperation. It hopes to provide reports on about 60 jurisdictions by the time of the Cannes G20 summit in November 2011.

READ MORE *(click to open):*

OECD news release: **EN**

OTHER TAX POLICY

OECD publishes summary documents on taxation, innovation and the environment

The documents contain the main findings of the same-titled OECD study of October 2010.

READ MORE *(click to open):*

Policy brief: **EN**

Guide to policy makers: **EN**

IMPRESSUM

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